

DRAFT Administrative Ordinance Provisions

Section 1-1-107: Appropriations Rights Allowed

Section 2-2-117: Domestic Allowances

Section 2-2-107 and -108: Registration of Certain Previously Unrecorded Uses of Water

1-1-107. Appropriations Rights Allowed

(1) The following appropriation rights or changes in appropriation rights may be authorized by the Board pursuant to the Compact and this Ordinance:

- (a) Domestic Allowances as set forth in Section 2-2-117 of this Ordinance;
- (b) Groundwater appropriations for stock water development as set forth in Section XX of this Ordinance;
- (c) Groundwater appropriations for Redundant or Substitute Wells as set forth in Section 2-2-114 of this Ordinance;
- (d) Permits for non-consumptive uses, including, but not limited to, hydropower generation and not including flow-through ponds;
- (e) Authorizations for non-consumptive geothermal heating or cooling exchange Wells as set forth in Section 2-2-119 of this Ordinance;
- (f) Temporary Emergency Appropriations as set forth in Section 2-2-222 of this Ordinance];
- (g) Uses of Replacement Water as set forth in Section 2-2-118 of this Ordinance;
- (h) [Storage of high spring flows;]
- (i) New surface or groundwater appropriations whose net depletions are offset by Mitigation Water [or subsurface aquifer recharge] in a manner that addresses adverse effect to Existing Uses from the estimated new [depletion]
- (j) Changes in Existing Use except for those uses authorized under subsections (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), 1(f) or (1)(j) of this section or those Existing Uses exempt

from the permitting requirements of MCA 85-2-306 or from the claim filing requirements of MCA 85-2-221 as set forth in MCA 85-2-222;

(k) Change of Existing Use as a result of Saved Water as set forth in Section XX of this Ordinance;

(l) Permits to appropriate surface water to conduct response actions related to natural resource restoration required for:

(i) remedial actions pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq.;

(ii) aquatic resource activities carried out in compliance with and as required by the federal Clean Water Act of 1977, 33 U.S.C. 1251 through 1387; or

(iii) remedial actions taken pursuant to Title 75, chapter 10, part 7 [MCA 75-10-Part 7 deals with “Remedial Action Upon Release of Hazardous Substance”][*or applicable provisions of Tribal law*].

(iv) No permit issued pursuant to subsection (1)(l) of this section may be used for dilution.

(m) uses of surface water for or by a municipality.

(2) Except as set forth in subsection (1) of this section, the Board may not grant a permit or other authorization to appropriate surface water or Groundwater within the exterior boundaries of the Flathead Indian Reservation.

2-2-117. Domestic Allowances for household and small business; process for application, review, and issuance.

1. Domestic Allowances include: Individual Domestic Allowances, Shared Domestic Allowances and Development Domestic Allowances.
2. Domestic Allowances may be appropriated only by a person who has a Possessory Interest in the property where the water is to be put to beneficial use and property rights in the diversionary works.
3. Domestic Allowances may be sourced from either Groundwater Wells or Developed Springs.
4. Domestic Allowances may not be used to fill or maintain Pits, Pit-Dams, Constructed Ponds, or Reservoirs.
5. Inside the boundaries of a Special Identified Groundwater Management Area, Domestic Allowances may be appropriated only according to the specific provisions of that particular aquifer management designation, which may or may not provide for the issuance of a Domestic Allowance pursuant to this section.
6. Before appropriating water for Domestic Use for a single Home or Business, an approved Individual Domestic Allowance from the Water Engineer is required. The Water Engineer can approve an Individual Domestic Allowance if:
 - a. The maximum flow rate is 35 gallons per minute or less;
 - b. The maximum annual diverted volume is 2.4 acre-feet or less;
 - c. The means of diversion is a single Well or Developed Spring;
 - d. The allowance is physically connected to and serves one and only one Home or Business;
 - e. The means of diversion includes Well Shaft Casing;

- f. Stock Water use associated with the appropriation is dispensed using Stock Tanks;
and
 - g. The maximum irrigation allowed for land associated with the Domestic Allowance is 0.7 acres.
7. Before appropriating water for Domestic Use to be shared among multiple Homes or Businesses, an approved Shared Domestic Allowance from the Water Engineer is required.
- The Water Engineer can approve a Shared Domestic Allowance if:
- a. The maximum flow rate is 35 gallons per minute or less;
 - b. The maximum annual diverted volume is 2.4 acre-feet or less;
 - c. The means of diversion is a single Well or Developed Spring;
 - d. The allowance is physically connected to two and not more than three Homes or Businesses that are not Developments;
 - e. The means of diversion includes Well Shaft Casing;
 - f. Stock Water use associated with the appropriation is dispensed using Stock Tanks;
 - g. If the well is connected to two homes or businesses, the maximum irrigation allowed for land associated with the Shared Domestic Allowances is 0.5 acres. If the well is connected to three homes or businesses, the maximum irrigation allowed for land associated with the Shared Domestic Allowances is 0.75 acres;
 - h. The application includes a copy of the Shared Well Agreement signed by all parties;
and
 - i. The allowance includes the water supply requirements for all Houses and Businesses connected to the well and all cumulative appropriations of all purposes do not exceed the limits set forth in (b) of this subsection.

8. Before appropriating water for Domestic Use for a Development of Homes or Businesses an approved Development Domestic Allowance from the Water Engineer is required. The

Water Engineer can approve a Development Domestic Allowance if:

- a. The maximum flow rate from each well or developed spring is 35 gallons per minute or less;
- b. The combined maximum annual diverted volume from all wells and developed springs is 10 acre-feet or less;
- c. Board approved measurement devices are installed on each Well or Developed Spring which record cumulative volume;
- d. The means of diversion is one or more Wells and/or Developed Springs not to exceed one Well or Developed Spring per Home or Business within the Development;
- e. The means of diversion includes Well Shaft Casing;
- f. The allowance is physically connected to multiple Homes or Businesses;
- g. Stockwater associated with the appropriation is dispensed using Stock Tanks;
- h. The maximum irrigable landscape associated with each home or business within the Development is 0.25 acres or less;
- i. The application includes a copy of the Shared Well Agreement signed by all parties;
- j. The allowance includes the water supply requirements for all Houses and Businesses within the entire Development and all cumulative appropriations for all purposes associated with the entire Development do not exceed the limits set forth in (b) of this subsection; and
- k. The applicant includes a copy of the development plan, plat, or equivalent as required by the associated county government.

9. Reporting requirements for Domestic Development Allowances are addressed in subsection 13 of this Section.
10. An applicant must fill out completely an application (Form A) and obtain an approved Domestic Allowance from the Water Engineer before drilling any Well(s) or developing any spring(s) and putting water to use pursuant this section. In addition to all form requirements, an application shall also include proof that the applicant has the possessory interest or the written consent of the person with possessory interest in the property where the point of diversion is located and where the water is to be put to beneficial use. The application must contain a site-map showing the location of all proposed Wells and Developed Springs including latitude and longitude in decimal degrees. The map must also show a minimum of 500 feet in radius around the proposed Well(s) or Developed Spring(s) and include any existing or proposed by the applicant:
- a. Well(s) including purpose of each well;
 - b. Sewage facilities including septic tanks and drainfields;
 - c. Buildings on the site, including identification well(s) connections;
 - d. Property lines and ownerships;
 - e. Irrigated acres per lot or unit well(s); and
 - f. Means of conveyance, water right points of diversions, and surface water features.
11. Upon certified receipt of an application for Domestic Allowance (Form A) under subsection 10 of this section, the office of the Water Engineer shall review the application within 45 days and may either approve the appropriation or return a defective application to the applicant, together with the reasons for returning it. If a corrected application is submitted within 30 days of its return by the office of the Water Engineer, no new filing fee shall be

required. Upon receiving a corrected application, the office of the Engineer has 30 days from the certified receipt of the corrected application to approve or deny the application. If the office of the Water Engineer does not approve or return an application within the initial 45 day review period, the application shall be deemed approved. If the office of the Water Engineer does not approve or deny a corrected application within 30 days of certified receipt, the application shall be deemed approved.

12. Once an applicant meets the requirements of subsections 6, 7, or 8, as applicable, and also meets the requirements of subsection 10, an application is approved by the Engineer under subsection 11 and the Approval to Develop a Domestic Allowance shall be issued by the Engineer. The Approval to Develop a Domestic Allowance allows an appropriator to construct a Domestic Allowance within, but not to exceed, 365 days of the date of approval.
13. An appropriation of a Domestic Allowance becomes valid and final when, within 120 days of completing the Well(s) or Developed Spring(s), an appropriator files a Domestic Allowance completion form (Form B) accurately and entirely, which must include a copy of the companion Well Log Report(s), [as well as a Domestic Allowance Water Measurement Flow Meter Report (Form C)].

DEFINITIONS

“Development” means contiguous or closely grouped parcels of land under the same or affiliated ownership, including, but not limited to, housing subdivisions and/or any combination of business and residential units [that are simultaneously but not consecutively platted].

“Domestic Use” means those water uses common to a household, including: washing; drinking; bathing; waste disposal; cooling and heating; domestic animals; and garden and

landscape irrigation. Domestic Use does not include the filling of ponds, pits, pit-dams or reservoirs.

“Emergency” means a situation that demands unusual or immediate action to prevent imminent injury to life, property or the environment.

“Enclosed Storage” means a storage container fully enclosed to include a cistern or tank.

“Mitigation Water” means the reallocation of surface water or Groundwater through a Change in Existing Use or other means to offset net depletions of surface water or Groundwater by new appropriations causing adverse effects to senior appropriators.

“Pits, Pit-dams, Constructed Ponds, or Reservoirs” refer to bodies of water that are created by man-made means and which store water for beneficial use.

“Public Water Supply System” means a system for the provision of water for human consumption from a community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year.

“Redundant Well” means a Well to provide a backup source of water for a Public Water Supply System.

“Shared Well” means a single Well that is physically manifold to multiple homes and/or businesses and is cooperatively used pursuant a Shared Well Agreement.

“Shared Well Agreement” means a legally binding document that stipulates the manner in which a Shared Well is cooperatively used between or among all Homes or Businesses connected to the well; it is signed by all possessory interest representatives for all individual homes and businesses that are connected to a Shared Well.

“Stock Tank” means a 30 to 1500 gallon tank used to provide drinking water for domestic animals.

“Substitute Well” means a Well that replaces an existing Well which is to be abandoned.

"Temporary Emergency Appropriation" means the temporary beneficial use of water necessary to protect lives or property by reason of fire, storm, earthquake or other disaster, or unforeseen combination of circumstances which call for immediate action. An appropriation made necessary due to drought conditions is not a temporary emergency appropriation.

“Well” means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of groundwater. The term does not include spring development or excavation, by backhoe or otherwise, for recovery and use of surface water or for the purpose of stock watering or irrigation when the [depth is 25 feet or less]; or an excavation made for the purpose of obtaining or prospecting for oil, natural gas, minerals, or products of mining or quarrying or for inserting fluids or gases to repressure oil- or natural-gas-bearing formation or for storing petroleum, natural gas, or other product.

“Well Log Report” means DNRC Form No. 603 (see ARM 36.12.102).

“Well Shaft Casing” means an impervious durable pipe placed in a well or developed spring to prevent the walls from caving, to seal off surface drainage, or undesirable water, gas, or other fluids to prevent their entering the well, and to prevent the waste of groundwater.

2-1-107. Registration of Certain Previously Unrecorded Uses of Water. Persons who have Existing Uses on the Reservation as of the effective date of this Ordinance shall register such Existing Uses with the Board if they are uses that:

(1) were not required to be filed, pursuant to §85-2-222, MCA, and in fact were not filed as claims in the Montana General Stream Adjudication for a pre-1973 use of water arising under State law; or

(2) were developed on or after July 1, 1973, at a volume and flow rate that would qualify as an exception to the permit requirements of §85-2-306, MCA, and for which a notice of completion of groundwater development (DNRC Form 602) or an application for provisional permit for completed stockwater pit or reservoir (DNRC Form 605) was filed with the DNRC but not processed by the DNRC.

(3) developed after July 1, 1973, at a volume and flow rate that would qualify as an exception to the permit requirements of §85-2-306, MCA, and for which a notice of completion of groundwater development (DNRC Form 602) or an application for provisional permit for completed stockwater pit or reservoir (DNRC Form 605) was not filed with the DNRC.

2-1-108. Process for Registration of Certain Previously Unrecorded Uses of Water.

(1) Each person claiming an Existing Use of water that falls under the terms of Section 2-1-107 shall, within 180 days of the effective date of this Ordinance, file a Registration Form [*need a form*] with the Engineer documenting that the Existing Use is for a purpose and with a flow rate and volume that falls within the terms of Section 2-1-107, and identifying:

- (a) the date of first use of the water;
- (b) the source of supply for the use;

- (c) the point of diversion by legal land description;
- (d) the place of use by legal land description; and
- (e) the period of use.

(2) Upon receipt of the Registration Form, the Engineer shall review the Registration Form within 180 days and may either issue a Registration Certificate [*need a certificate*] or return a defective Registration Form to the filer, together with the reasons for returning it. If a corrected Registration Form is submitted within 30 days of its return by the Engineer, no new filing fee shall be required. Upon receiving a corrected Registration Form, the Engineer has 90 days from the certified receipt of the corrected Registration Form to issue a Registration Certificate or reject the registration. If the Engineer does not issue a Registration Certificate or reject the registration within the initial 180 day review period, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate. If the Engineer does not issue a Registration Certificate or reject the registration within 30 days of certified receipt of a corrected Registration Form, the Registration Form shall be deemed approved and the Board shall issue a Registration Certificate.

(3) For any use registered under Section 2-1-107(1) with a date of first use on or before August 22, 1996, the priority date of the use shall be the date of first beneficial use, and such a date shall be reflected on the Registration Certificate.

(4) For any use under Section 2-1-107(2) with a date of first use after August 22, 1996, but for which the user lodged a Notice of Completion of Groundwater Development (DNRC Form 602) or Application For Provisional Permit For Completed Stockwater Pit or Reservoir (DNRC Form 605) [*not certain if any of these have been filed*] with the DNRC that the DNRC

did not process, the priority date for the use shall be the date of filing of appropriate form, and such a date shall be reflected on the Registration Certificate.

(5) For any use under Section 2-1-107(3) with a date of first use after August 22, 1996, for which the user did not lodge a correct and complete Notice of Completion (602) or Stockwater Pit (605) with the DNRC, the priority date for the use shall be the Effective Date of the Compact, and that date shall be reflected on the Registration Certificate.

(6) Any person filing a Registration Form with the Engineer dissatisfied with the decision of the Engineer or Designee may appeal to the Board (and become an appellant) and obtain review of the Engineer's decision. A notice of appeal to the Board (Form __) must be received by the Board within 30 days of the Engineer's decision.

(7) Appeal to the Board shall be pursuant to the provisions of Section 2-2-111.

(8) Appeal of the Board's final decision shall be pursuant to the provisions of Section 2-2-112.

(9) *[Add provision if person failed to register]*